

COMMISSION DECISION

of 12.12.1993

finding that the repayment of import duties in a particular case is justified

(request submitted by Germany)

REM 17/93

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties,¹ as last amended by Regulation (EEC) No 3069/86,²

Having regard to Commission Regulation (EEC) No 3799/86 of 12 December 1986 laying down provisions for the implementation of Articles 4a, 6a, 11a and 13 of Council Regulation (EEC) No 1430/79 on the repayment or remission of import or export duties,³ and in particular Article 8 thereof,

Whereas by letter dated 1 June 1993, received by the Commission on 14 June 1993, Germany asked the Commission to decide, under Article 13 of Regulation (EEC) No 1430/79, whether the repayment of import duties is justified in the following circumstances:

1 OJ No L 175, 12.7.1979, p.1.

2 OJ No L 286, 9.10.1986, p.1.

3 OJ No L 352, 13.12.1986, p.19.

In May 1989 a German firm imported polyester fibre of Turkish origin falling within CN code 5503 20 00. These goods were subject to an anti-dumping duty under Regulation (EEC) No 3946/88.⁴ The duty could be suspended, however, on condition that the goods were used as fibres for padding and that this was checked by the customs services.

The firm concerned entered the goods for free circulation under the general entry procedure, but failed to take account of the anti-dumping duty in the general declaration. The firm had mistakenly failed to make use of the option accorded by Article 1(3) of Regulation (EEC) No 3946/88 of having the goods cleared for end use, a procedure which was free of anti-dumping duty, although it had been granted the requisite authorization.

Following an external audit in July 1990, the firm's failure to take account of the anti-dumping duty was revealed, payment of the duty was requested and the amount duly paid. The firm subsequently submitted an application for a refund under Article 3 of Regulation (EEC) No 1430/79 which was rejected by the German administration. The German fiscal authorities upheld the decision to reject the application, stating that the repayment could be requested pursuant to Article 13 of the Regulation in question;

Whereas in accordance with Article 8 of Regulation (EEC) No 3799/86, a group of experts composed of representatives of all the Member States met on 3 September 1993 within the framework of the Committee on Duty Free Arrangements to consider the case;

Whereas in accordance with Article 13(1) of Regulation (EEC) No 1430/79, import duties may be repaid or remitted in special situations, other than those laid down in sections A to D of that Regulation, resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned;

4 OJ No L 348, 17.12.1988, p.49.

Whereas Regulation (EEC) No 3946/88 provides for suspension of anti-dumping duties provided that certain mentions are expressly included on the declaration of entry for free circulation and checks can be carried out on the use of the goods as laid down in Regulation (EEC) No 4142/87 determining the conditions under which certain goods are eligible on import for a favourable tariff arrangement by reason of their end-use;⁵

Whereas Article 3 of the latter Regulation also lays down that the benefit of the tariff arrangement is conditional upon the granting of a written authorization by the competent authorities of the Member State in which the goods are declared for entry into free circulation; whereas such an authorization was issued to the firm concerned;

Whereas the conditions relating to the use of the goods have been complied with and the requisite checks have been carried out;

Whereas the firm failed to mention on the declaration for entry into free circulation that the goods should qualify for a favourable tariff arrangement by reason of their end use and that the authorization had been issued to it; whereas this failure had no practical consequences for the correct application of the preferential tariff arrangement;

Whereas this was the first time that the firm had carried out its own clearance procedures;

Whereas in the special circumstances of the case in question no deception or obvious negligence may be attributed to the firm concerned;

Whereas, therefore, the repayment of import duties requested is justified in this case,

5 OJ No L 387, 31.12.1987, p. 81.

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HAS ADOPTED THIS DECISION:

Article 1

The repayment of import duties in the sum of DM [REDACTED] requested by Germany on 6 June 1993 is hereby found to be justified.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 8 12. 1993

For the Commission